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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 28th August, 1987:—

I

BILL NO. XXIII OF 1987

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-eighth year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1987.
2. After article 156 of the Constitution, the following article shall be inserted, namely:—

"156A. Notwithstanding anything contained in this Constitution, the Governor may, for violation of the Constitution, be removed from office by impeachment by Parliament in the manner provided in article 61 for impeachment of the President."

Short title.

Insertion
of new
article
156A.

Impeach-
ment of
Governor.

STATEMENT OF OBJECTS AND REASONS

The office of the Governor is of crucial importance in the constitutional set up of our country. The Constitution casts upon the Governors of the States the responsibility of preserving, protecting and defending the Constitution and the law. The Governors hold office during the pleasure of the President. The Governor may, however, by writing under his hand addressed to the President resign his office. There is no specific provision for the removal of the Governors from the office if the President does not favour his removal. There is also no provision for the impeachment of the Governors for the violation of the Constitution, as provided by article 61 in the case of the President.

There have been occasions in the past when allegations were made that certain acts of omissions and commissions of the Governors amounted to the violation of the Constitution. In the year 1982 the actions of the then Governor of Haryana, in matters relating to the appointment of the Chief Minister of the State under article 164 after the poll of May 19, 1982, led the opposition parties to make the allegation that the Governor of Haryana acted in violation of the Constitution which he was bound to preserve, protect and defend.

The Constitution provides for impeachment of the President for violation of the Constitution under article 61. But there is no such provision in the case of Governors. In the absence of any such provision, neither Parliament nor the State Legislatures can exercise necessary restraint on the Governors.

It is necessary to remove this lacuna and shortcoming in order to create suitable mechanism in the Constitution itself to check the undesirable exercise or misuse of power by the Governors.

Hence this Bill.

CHITTA BASU

II

BILL NO. XXII OF 1987

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-eighth year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1987.

Short
title.

2. In article 31C of the Constitution,—

Amend-
ment of
article
31C.

(a) for the words and figures “all or any of the principles laid down in Part IV”, the words, brackets, letters and figures “the principles laid down in clause (b) or clause (c) of article 39” shall be substituted;

(b) the words “and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy:” shall be omitted.

Omis-
sion of
Part
XIVA.

3. Part XIVA of the Constitution shall be omitted.

Amend-
ment of
article
366.

4. Article 366 of the Constitution shall be renumbered as clause (2) of that article, and before clause (2) as so renumbered, the following clause shall be inserted, namely:—

‘(1) In the Preamble to this Constitution,—

(1) the expression “REPUBLIC”, as qualified by the expression “SECULAR”, means a republic in which there is equal respect for all religions; and

(2) the expression “REPUBLIC”, as qualified by the expression “SOCIALIST” means a republic in which there is freedom from all forms of exploitation, social, political and economic.’

Amend-
ment of
article
368.

5. In article 368 of the Constitution,—

(a) in clause (2), after the proviso, the following proviso shall be inserted, namely:—

‘provided further that if such amendment—

(a) seeks to make any change which, if made, would have the effect of—

(i) impairing the secular or democratic character of this Constitution; or

(ii) abridging or taking away the rights of citizens under Part III; or

(iii) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of States on the basis of adult suffrage; or

(iv) compromising the independence of the judiciary; or

(b) seeks to amend this proviso,

the amendment shall also require to be approved by the People of India at a referendum under clause (4)”;

(b) for clauses (4) and (5), the following clauses shall be substituted, namely:—

“(4) The referendum for the purpose of seeking the approval of the people of India for any amendment of the nature referred to in the second proviso to clause (2) shall be through a poll, and—

(i) all persons who are for the time being eligible to be voters under article 326 at elections to the House of the People shall be entitled to vote at such poll; and

(ii) any such amendment shall be deemed to have been approved by the people of India if such amendment is approved by a majority of the voters voting at such poll which shall be not less than fifty-one per cent. of the voters entitled to vote at such poll.

(5) The superintendence, direction and control of the preparation of the rolls of voters for and the conduct of every referendum under this article shall vest in the Election Commission and the result of such referendum as declared by the

Election Commission shall not be called in question in any court of law.

(6) Subject to the provisions of clauses (4) and (3), Parliament may from time to time by law make provisions with respect to all matters relating to or in connection with the referenda under this article, including the preparation of the rolls of voters."

6. In the Seventh Schedule to the Constitution,—

Amend-
ment of
the
Seventh
Sche-
dule.

(a) in List I-Union List, entry 2A shall be omitted;

(b) in List II-State List,—

(i) in entry 1, for the words "the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof", the words "the use of naval, military or air forces or any other armed force of the Union" shall be substituted;

(ii) for entry 2, the following entry shall be substituted, namely:—

"2. Police, including railway protection force, and village police.";

(iii) after entry 10, the following entry shall be inserted, namely:—

"11. Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.";

(iv) after entry 18, the following entry shall be inserted, namely:—

"19. Forests."

(v) in entry 41, for the words "State public services", the words, figures and letter "State public services subject to the provisions of entry 11B of List III" shall be substituted:

(c) In List III-Concurrent List,—

(i) after entry 11A, the following entry shall be inserted, namely:—

"11B. Adjudication or trial by tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State or of a local or other authority subject to the control of a State Government.";

(ii) entry 17A shall be omitted;

(iii) for entry 25, the following entry shall be substituted, namely:—

"25. Vocational and technical training of labour."

STATEMENT OF OBJECTS AND REASONS

The Constitution (Forty-second Amendment) Act was passed with the object of institutionalising the dictatorship. The said amendment Act was a severe blow to the concept of Parliamentary democracy. The distortions caused by the said amendment Act in the Constitution of our country need to be corrected.

The Lok Sabha, with that object in view, passed the Constitution (Forty-fourth Amendment) Bill.

The Rajya Sabha in its wisdom made certain amendments in the Constitution (Forty-fourth Amendment) Bill as passed by the Lok Sabha. The Lok Sabha accepted those amendments. The distortions which crept into the Constitution as a consequence of the Constitution (Forty-second Amendment) Act, therefore, continue to remain. It is felt necessary to remove those distortions.

Hence this Bill.

CHITTA BASU.

FINANCIAL MEMORANDUM

Sub-clause (a) of clause 5 of the Bill seeks to insert an additional proviso in clause (2) of article 368 of the Constitution. This proviso provides for a requirement as to approval by the people of India at a referendum with respect to amendments of the nature specified therein. According to the amendments proposed in sub-clause (b) of clause 5, Parliament may from time to time by law make provision with respect to the matters relating to, or in connection with, such referenda, including the preparation of the rolls of voters. The holding of a referendum for the aforementioned purposes will involve expenditure. The expenditure which will be involved will depend upon the provisions which Parliament may make with respect to such referenda.

However, as the steps involved in holding a referendum such as the preparation of the rolls of voters, the conduct of the poll, etc., are similar to those involved in general elections to Lok Sabha, the expenditure which a referendum would involve would be approximately the same as that involved in the conduct of general elections to Lok Sabha. On this basis, it is estimated that the expenditure on the preparation of the rolls of voters will be approximately Rs. 10 crores and on the conduct of a referendum will be approximately Rs. 30 crores. In the case of general elections, half of the expenditure on the preparation of the rolls of voters is shared by the State Governments. However, if the rolls of voters are revised and prepared for the purpose of a referendum only, the full expenditure on that account will be borne by the Central Government. Thus, the total expenditure in respect of each referendum is likely to be to the tune of Rs. 40 crores, as a rough estimate. This expenditure will be of a recurring nature as the same will have to be incurred on each occasion when a referendum becomes necessary. Having regard to the nature of amendments which require to be approved at a referendum, the possibility of any such amendments being initiated is very remote. Further, the electoral rolls maintained for purposes of elections to Lok Sabha can be utilised for the purposes of the referendum. If a referendum is held in the same year in which a general election takes place, the electoral rolls will not require much revision and, as such, there will be no expenditure on the revision and preparation of the electoral rolls on such referendum. If, however, the referendum is held simultaneously with the General Elections, the additional expenditure, which would be incurred, will be negligible. The law which Parliament may make with respect to matters relating to referenda will no doubt take into account the various factors which will help in reducing the expenditure on account of referenda. There will be no non-recurring expenditure.

III

BILL No. XXVIII OF 1987

A Bill further to amend the Constitution of India

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Constitution (Amendment) Act, 1987.

Amend-
ment of
article 78.

2. In article 78 of the Constitution, for the words "It shall be the duty of the Prime Minister", the words and figure "Notwithstanding anything in article 74, it shall be the duty of the Prime Minister—" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Article 78 of the Constitution enjoins upon the Prime Minister to furnish to the President information relating to the affairs of the State and on issues of national importance. Under this article the President has the right to seek and receive information. The information must be adequate so as to enable the President to discharge his functions as the Head of the State.

Contrary to this Well accepted interpretation of article 78, another interpretation has of late been sought to be given to this article restricting the right of the President to be informed. The later interpretation seeks to render article 78 dependent upon article 74, which enjoins upon the President to act as aided and advised by the Council of Ministers. The general view is that the President has the unrestricted right to be informed by the Prime Minister for the purpose of discharging his functions.

In view of the raging public controversy over the issue, it is felt necessary to make the position clear in this regard.

Hence, this Bill.

CHITTA BASU.

BILL NO. XXVII OF 1987

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

Short
title
and com-
mence-
ment.

1. (1) This Act may be called the Constitution (Amendment) Act, 1987.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion
of new
article
32A.

2. After article 32 of the Constitution, the following article shall be inserted, namely:—

Free legal
aid to
women.

“32A. Notwithstanding anything in the Constitution, the State shall provide to every unemployed woman, with free legal aid, as and when required, in order to ensure her security and protection against oppression and exploitation.

Explanation.—The term “free legal aid” shall mean and include free counsel, exemption from payment of court fees and expenditure on filing of complaints, petitions, writs, etc. in all courts, Tribunals, High Courts and the Supreme Court”.

STATEMENT OF OBJECTS AND REASONS

The Bill provides for free legal aid to women with a view to ensure their security and protection from oppression and exploitation. This provision is proposed to be made as one of the fundamental rights so that the needy woman can seek remedy in courts to safeguard their interests.

Hence this Bill.

SATYA PRAKASH MALAVIYA

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that the free legal aid should be provided to unemployed women. For this purpose Counsels have to be engaged to plead the cases of such women in Lower Courts, High Courts and Supreme Court. The Central Government shall have to provide financial assistance to State Governments in respect of cases arising out of the respective States in Lower and High Court. In respect of cases arising in Union Territories, the Central Government shall have to incur expenditure. It is difficult to give an estimate of expenditure to be incurred by the Central Government in this regard. However, an annual recurring expenditure to the tune of about rupees two crores is likely to be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees one crore is also likely to be involved.

SUDARSHAN AGARWAL,
Secretary-General.